

UNITED NATIONS CONCILIATION COMMISSION FOR PALESTINE

RESTRICTED

W/32

19 January 1950

ORIGINAL: ENGLISH

Letter and Memorandum dated 22 November 1949, Concerning Compensation, received by the Chairman of the Conciliation Commission from Mr. Gordon R. Clapp, Chairman, United Nations Economic Survey Mission for the Middle East.

Sir,

The terms of reference of the Economic Survey Mission include the problem of compensation for losses suffered by refugees. The Mission has considered this matter at various times since the beginning of its work.

In the course of conversations with this Mission, the Israeli Government re-affirmed the position it had previously taken, namely that compensation should be considered as part of a general peace settlement together with the question of reparations for war damages.

It was clear to the Mission that, unless the Israeli Government was willing to consider compensation separately, it would be premature to make detailed recommendations regarding the evaluation of damage or the machinery for the settlement of compensation claims.

Study of the compensation problem was, therefore, confined to legal analysis of the matter by the Legal Adviser to the Mission. A memorandum prepared by the Legal Adviser, Mr. Paolo Contini, is attached. We believe that it may be useful to the Commission.

On the basis of discussions within this Mission and the advice of Mr. Contini, the following suggestions may be helpful in pointing the way to steps that might be taken with reference to this complicated problem. These suggestions are based upon the conclusions implicit in Mr. Contini's study.

Compensation for property of non-returning refugees

(a) The Israeli Government should be urged to agree to the principle that payment of compensation for abandoned property (both movable and immovable) should be separate from a general peace settlement with the Arab states. In support of this position the following points might be mentioned:

- (i) The principle of compensation for the property of non-returning refugees has been clearly established by the General Assembly, and has been basically acknowledged by Israel. However, to link the payment of compensation to the problem of reparations would deprive the refugees of all or part of the benefit to which they are entitled and defeat the purpose of the resolution.
- (ii) The bulk of the refugees from Israeli territory were not citizens of the Arab States at the time of their displacement, and therefore their right to compensation should not be confused with the claims and counter-claims between the contending States and their nationals.
- (iii) The early payment of compensation to non-returning refugees would give them an incentive to choose to resettle outside of Israeli territory, which would conform with the expressed wish of the Israeli Government.

(b) In order to avoid the lengthy process of settlement of each individual claim, which would take a considerable number of years, compensation should be paid on the basis of a lump sum settlement. Agreement should be obtained from the Arab States and Israel, if possible in consultation with refugee representatives, with respect to the principle of lump sum compensation.

(c) Whether or not (a) and (b) are negotiated successfully, the problem might be advanced by setting up a Refugee Property Trustee, under the Palestine Conciliation Commission, with the following functions: (i) To make an appraisal of the value of refugee property by sampling methods applied to available records; (ii) To negotiate or to assist in negotiating an agreement with the interested

parties with respect to the amount to be paid by Israel into a refugee trust fund as lump sum compensation if the principle is agreed upon; (iii) To administer the fund on behalf of the refugees; (iv) To make recommendations to the UNCCP, its successor, or the General Assembly of the United Nations as to whether the lump sum should be divided among the refugee property owners on a pro-rata basis or paid into a resettlement fund to be used for the rehabilitation of the refugees as a group; (v) If it is decided that the latter course is preferable, to turn over the lump sum to the United Nations agency which will be responsible for the refugee relief and rehabilitation programme.

One of the main objectives and advantages of the suggested approach would be to secure payment of compensation at the earliest possible time, without waiting for a general peace settlement. If, however, it was impossible to obtain Israel's agreement on this point, the following compromise alternative might be considered:

- (i) Israel should be urged to pay at the earliest possible date into the refugee trust fund a percentage - say between 10% and 50% - of the lump sum compensation. With regard to the possibility of Israel's acceptance of this proposal it should be mentioned that in an informal conversation with members of this Mission a representative of the Israeli Government has indicated that their reparation claim against the Arab States is expected to be lower than the amount payable by Israel as compensation to refugees. Although the knowledge of this fact may be useful it is stressed, however, that in this Mission's view the United Nations should negotiate payment of a percentage as a matter entirely separate from reparations.
- (ii) The balance of the lump sum should be paid by Israel into the refugee fund at the conclusion of the peace settlement. In order not to compromise the principle of separation between the refugees' right to compensation and the eventual reparation account between the contending States, the balance payable by Israel to the refugee account should not be set-off against the amount which might be awarded to the Israeli Government as war reparations, if any such award is granted.

The foregoing compromise alternative would not alter the substance of the suggestions made under (a), (b) and (c) above. Although final settlement of the compensation account would be delayed, this approach might offer some assurance of early payment of an advance and keep the door open for negotiations on the principle and amount of a lump sum compensation.

#### Compensation to returning refugees

As is indicated in the attached memorandum, it is doubtful that claims by returning refugees for loss or damage to property fall within the scope of international law. If such claims are governed by Israeli law it is doubtful that they would be given a preferential status with respect to war damages suffered by other Israeli citizens. Since no legislation has yet been enacted by the Israeli Government on the subject of war damages the value of refugee claims would be very problematical.

On the other hand, if it is established that returning Arab refugees should be given the status of aliens, thus falling under the protection of international law, it may be expected that the Israeli Government would consider them as enemy aliens. In this event, the claims by returning refugees could be properly set-off against the Israeli reparation claims with the Arab States. Thus again the refugees might fail to receive any benefit.

In order to give some practical value to the principle of compensation for lost and damaged property it is suggested that the Government of Israel be urged, in accordance with the spirit of the General Assembly's resolution, to add to the lump sum to be paid to non-returning refugees an amount in payment of compensation for property loss and damage suffered by returning refugees. If this is agreed by the Israeli Government, the recommendations under (c) above would be applicable. If, however, agreement could not be obtained from Israel on this point, the following alternative suggestions are submitted:

- (a) As soon as the number and names of the refugees who will return to Israel has been determined, the Refugee Property Trustee should make an appraisal of property loss and damage suffered by returning refugees and

reach an agreement with the interested parties regarding a lump sum to be paid as compensation.

- (b) The Arab States and the State of Israel should be urged to agree that the Party which may be required by the Peace Treaty to pay reparations or indemnities will first pay the equivalent of the above lump sum into the refugee trust fund, and the balance to the other Party. If the amount to be paid as reparations or indemnities is insufficient to cover the lump sum, the balance will be made up by both Parties, at a scale to be mutually agreed or alternatively to be assessed by the Secretary-General of the United Nations or by an agreed arbitrator.
- (c) The lump sum thus paid into the refugee trust fund should become part of the funds administered by the Refugee Property Trustee under paragraph (c) above.

I have the honour to be,

Sir,

Yours faithfully,

(Sgd) Gordon R. Clapp

Chairman

LEGAL ASPECTS OF THE PROBLEM OF COMPENSATION TO PALESTINE REFUGEES<sup>x</sup>

Paragraph 11 of General Assembly resolution No. 194 (III) of 11 December 1948 provides as follows :

"The General Assembly ...

RESOLVES that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to the property which, under principles of international law or in equity, should be made good by the Governments or Authorities responsible ..."

1. Compensation for the property of non-returning refugees

The General Assembly has established the principle that "compensation should be paid for the property of those (refugees) choosing not to return". The verb "choose" indicates that the General Assembly assumed that the principle "the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so" would be fully implemented, and that all the refugees would be given a free choice as to whether or not they wished to return home. However, in the event that not all the refugees are given a free choice on this matter it would seem equitable to give a broad interpretation of the words of the resolution, namely that any refugee who is unwilling or unable to return is entitled to compensation. Indeed, if the principle of compensation is established for those refugees who, presumably having found a satisfactory settlement elsewhere, decide not to return, the same right should be given a fortiori to those who, being unable to return in spite of their desire to do so, are likely to be in a worse position than the other group.

---

x This discussion deals only with compensation to Arab refugees displaced from Israeli territory, which is the main problem at issue. It is understood, however, that the principles expressed herein are intended to be applicable to all Palestine refugees and to all the States involved in the hostilities.

Liability for payment of compensation

The Government of Israel has agreed to pay compensation for land<sup>x</sup> abandoned by Arab refugees from Israel, provided that such payment is arranged as part of a general peace settlement at which Israel will claim damages from the Arab States for waging war on Israel (see UNFCC Doc. IS/5).

With regard to the limitation placed upon the type of property for which compensation would be paid, from the legal point of view there does not seem to be any justification for a distinction between land and other property or between movable and immovable property. No such distinction was made in the resolution, and it was clearly the intention of the General Assembly that non-returning refugees should be compensated for whatever property they have left behind. Furthermore, the Absentee Property Act issued by the Israeli Minister of Finance on 2 December 1948 vested all absentee property<sup>xx</sup>, including that of Arab refugees, in the Custodian. A refusal to accept the principle of compensation to non-returning refugees for all their property vested in the Custodian would be equivalent to a confiscation of private property. Such action would appear to be contrary to a legal principle which is generally recognized both under the domestic law of most countries and under international law.

With regard to the Israeli Government position that payment will be made only as part of a general peace settlement this is a political question, and falls outside the scope of this memorandum.

---

x On 10 October 1949 Dr. Horowitz of the Israeli Government clarified to members of the UNESMME that the expression "abandoned land" includes also urban buildings.

xx According to Regulation 1(f) of the Act "'property' includes movable and immovable property, money, a right in property, whether in possession or in action, and a good will."

## II. Compensation to returning refugees

The General Assembly resolution provides that "compensation should be paid ... for the loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or Authorities responsible..."

Although the foregoing formulation might be applicable to any loss or damage to property which occurred during the hostilities in Palestine, the present discussion is limited to the problem of compensation to refugees. Accordingly, we will examine the meaning of this provision with respect to those refugees who may return to their homes in Israeli territory.

The main question is : which rules of international law<sup>x</sup> or equity<sup>xx</sup> govern the matter of compensation for loss or damage to the property of returning refugees ?

There is a body of rules of international law regarding the responsibility of a State for loss or damage to property located within its territory owned by foreign nationals or foreign States. These rules cover the responsibility of a State both in time of peace and in time of war. With regard to the procedure for the settlement of these claims the normal practice is that the injured party submits the claim to his Government, whereupon settlement of the claim is negotiated between that Government and the Government of the defendant state through Mixed Claims Commissions or other procedures. In order to be entitled to diplomatic protection the injured party must have been a citizen or national

---

x The discussion will deal with principles of international law which are applicable in the absence of treaty provisions. The conclusions may be different if this matter is regulated in the future by treaty or international convention.

xx The meaning of the words "in equity" in paragraph 11 of the resolution is not quite clear, and the records of the discussion before the First Committee and the Plenary Session do not shed any light on the subject. Perhaps the General Assembly intended to indicate that in the settlement of individual claims account should be taken not only of established principles of international law but also of generally accepted principles of equity.



of the claimant state at the date of the injury<sup>x</sup> : it is also usually held that the claim must be continuously national, i.e. owned by a national of the claimant state from the date of the original injury to the date of the presentation of the claim<sup>xx</sup>.

On the other hand, claims by citizens against their own Government for loss or damage to property fall outside the scope of international law, and are governed by the municipal law of that country. Accordingly, it is essential to ascertain: a) what was the citizenship of Arab refugees at the time when the loss or damage to their property took place? b) what will be the citizenship of refugees re-admitted to Israel? c) if returning refugees are not to be considered as citizens of Israel, of which State are they citizens for the purpose of being entitled to diplomatic protection in the presentation of their claims?

Of the estimated 750,000 Arab refugees approximately 30,000 were citizens of Arab States (Egypt, Iraq, Jordan, Lebanon and Syria) at the time of their displacement, and would therefore be entitled to diplomatic protection by their Governments in the presentation of their claims against Israel. In accordance with the normal practice these claims, arising from a state of war between Israel and the Arab States, would presumably become part of the overall peace settlement, and would be partially or totally set-off against the claims by the State of Israel and its citizens with the Arab States.

The bulk of the Arab refugees, however, were Palestinian citizens under the Mandate. The loss and damage to their property occurred in most cases after their escape, which took place during the months immediately preceding and immediately following the proclamation of the State of Israel. For the purpose of compensation, therefore, it is necessary to determine the citizenship of Palestinian Arabs at the time of the flight from their homes. In considering this question

---

x Whiteman, Damages in International Law, Vol. I, P.96

There are a few exceptions to this rule, but they have no bearing upon the problem under discussion.

xx Idem, p. 109

it should be borne in mind that the Israeli Government has not yet issued a citizenship law. When such law is enacted it may be presumed that the citizenship status of Palestinian Arabs before and after their escape will be clarified. In the absence of a law on this subject, however, the following elements should be taken into consideration :

- a) Before the proclamation of the State of Israel all the inhabitants of Palestine, including Jews and Arabs, had the same status with regard to Palestine citizenship under the Mandate<sup>x</sup>.
- b) No legal differentiation as to citizenship was made between Jews and Arabs by the Israeli Government after the formation of the State<sup>xx</sup>.
- c) Arabs at present legally residing in Israel have the same status with regard to citizenship as Jewish residents.
- d) The Israeli Government has indicated that Arab refugees re-admitted to Israel will be considered as having the same status as citizens of Israel<sup>xxx</sup>.

It appears, therefore, that Arabs should be regarded as having the same citizenship status as Jews, both at the time of their displacement and upon their re-admission to Israeli territory. The temporary exodus from Israel of those refugees who will return legally to that country would not seem to change their citizenship status.

---

x Palestine citizenship was governed by the Palestine Citizenship Orders, 1925 to 1942, Consolidated 1 [SRO (1925) No. 777; (1939) No. 863; (1941) No. 1121; (1942) No. 1177].

xx Pending the enactment of a citizenship law by the Israeli Government the Palestine Citizenship Orders issued under the Mandate should be considered as still in force, in accordance with Sec. 11 of the Israeli Law and Administrative Ordinance, 1948, which provides that "The Law which was in force in Palestine on 14 May 1948 will remain in force, so far as it is not inconsistent with this Ordinance or other laws to be issued by or under the authority of the Provisional State Council and with such changes as flow from the establishment of the State and its authorities".

xxx In a memorandum submitted by Dr. G. Meron for the Government of Israel to the Technical Committee on 28 July 1949, it is stated: "The Arab refugees thus re-settled in Israel will, also economically speaking, be treated on the same footing as Jewish repatriates coming from abroad ... Arab citizens in the State of Israel enjoy the same rights and privileges and are subject to the same laws as any other inhabitant of the country."

It follows from the foregoing considerations that claims by Arab refugees for loss or damage to their property would fall outside the scope of international law, and would be governed by Israeli laws and regulations on damages (and in particular on war damages) applicable to all Israeli citizens.

The above conclusion has been reached on a rebus sic stantibus assumption. It is possible, however, that the status of Arab refugees might be changed by the enactment of Israeli legislation making Israeli citizenship dependent upon certain conditions which might not be met by Arab refugees (e.g. continuous residence in Israel since 15 May 1948, or other equivalent provisions). In this event the refugees would presumably become stateless persons, and their possibility of filing an international claim would be precarious because of lack of diplomatic protection by any Government. On the other hand, the status of Arab refugees might be changed by international action (such as a General Assembly resolution or an agreement subscribed to by Israel) which might establish that, for purposes of compensation Arab refugees should be accorded the protection afforded by international law to aliens.

In the event that Arab refugees were to be considered as aliens with respect to Israel the following questions would arise :

- a) Should compensation to Arab refugees be governed by the rules of international law<sup>x</sup> applicable to neutral or enemy aliens ?

x Although the legally binding character of the Hague Conventions is still under discussion, the following rules adopted at the IV Hague Convention of 18 October 1907 might be applicable to the Palestine conflict :

Sec. II Hostilities

Art. 23 "It is especially forbidden ... (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war."

Idem, Art. 28 "The pillage of a town or place, even when taken by assault, is prohibited."

Sec. III Military Authority over the territory of the hostile State

Art. 46 "... Private property can not be confiscated."

Art. 47 "Pillage is formally forbidden."

Art. 56 "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."

- b) Which State or States could grant diplomatic protection to the refugees in the presentation of their claims ?
- c) If the refugees are to be considered as stateless persons, could the United Nations undertake their legal or diplomatic protection with respect to compensation ? If so, which procedure should be adopted ?

These questions are merely intended to give an indication of the type of problems which would have to be solved if returning refugees are not to be considered as Israeli citizens. At the present stage, however, there is no need to discuss these points in detail because the answers would have only a hypothetical value.

### III Method of Compensation

Redress for loss and damage to the property of refugees may take place either by way of reparations, i.e. lump sum payment to the refugees as a group, or restoration, i.e. settlement of individual claims. The former method was adopted, for example, at the end of the second World War with respect to non-repatriable victims of Nazism unable to claim the protection of any Government. Under the Final Act of the Paris Conference on Reparations of 21 December 1945, and the Agreement of 14 June 1946, the Allied Governments agreed to allocate a sum of twenty-five million dollars, and all the non-monetary gold found by the Allied armies in Germany for the rehabilitation and resettlement of the victims of Nazi action. It was further provided that the method of collective reparations would not prejudice individual claims by refugees against a future German Government.

The method of restoration by way of settlement of individual claims has been usually adopted by the various Mixed Claims Commissions established for handling claims between States and their nationals. Under this procedure the remedies open to claimants are: a) restitution, and b) indemnification.

a) Restitution - Whenever it is established that, under international law, the property of a refugee has been wrongfully seized, sequestered, requisitioned, confiscated, or detained by the Israeli Government, the claimant is entitled to

restitution of the property, if it is still in existence, plus indemnity for damages<sup>x</sup>. Restitution could be applicable to property of returning refugees and personal property - especially blocked accounts - of non-returning refugees. With regard to returning refugees it appears that the Israeli Government has accepted the principle of restitution under Regulation 29 of the Absentee Property Act, which provides that :

"The custodian may release any property of an absentee by issuing a certificate under his hand, stating that the person in respect of whom the property has become property of an absentee has ceased to be an absentee. Where the custodian has issued such a certificate the title to the released property shall revert to such person".

b) Indemnification - Whenever a loss or damage to refugee property is attributable to an action by the Israeli Government, which is wrongful under international law, the claimant is entitled to a pecuniary indemnification in addition to the restitution of returnable property.

It is understood that if the method of restoration by way of settlement of individual claims is adopted the body charged with rendering the awards will have to take into consideration in each case such elements as proper evidence with respect to title of ownership, responsibility for loss or damage, military necessity and other defences, value of lost or damaged property, etc.

#### IV. Measure of Damages

There are no fixed rules of international law with respect to the computation of the just and fair value of lost or damaged property. Different methods have been adopted by different Claims Commissions and Treaties. As an example of the principles which have governed in the past the following criterion used by the Mixed Claims Commission, United States and Germany, may be quoted :

---

x Whiteman, Damages in International Law, Vol.II, p.857.

"in all claims based on property taken and not returned to the private owner the measure of damages which will ordinarily be applied is the reasonable market value of the property as of the time and place of taking in the condition in which it then was, if it had such market value; if not, then the intrinsic value of the property as of such time and place." <sup>x</sup>

The method adopted by the Commission in determining the reasonable market value was as follows :

"In computing the reasonable market value of plants and other property at the time of their destruction, the nature and value of the business done, their earning capacity based on previous operations, urgency of demand and readiness to produce to meet such demand which may conceivably force the then market value above reproduction costs, even the goodwill of the business, and many other factors, have been taken into account". <sup>xx</sup>

These rules, however, may be only partially applicable to the determination of damage to the property of Palestinian refugees. The standards of value vary according to the economy of the country, the type of property, etc. Such standards can only be established by the body which will be ultimately responsible for the settlement of the claims after a detailed study of the particular circumstances of this type of cases.

S/ Paolo Contini

Beirut, 22 Nov. 1949

---

x Whiteman, Vol.II, p.1528

xx Whiteman, Vol.II, p.1529